

STATE OF VERMONT  
PUBLIC SERVICE BOARD

Docket No. 7811

Petition of Vermont Public Power Supply Authority   )  
Pursuant to 30 V.S.A. § 108(a) for Approval to       )  
Pledge Collateral as Credit Support under Purchase   )  
Power Agreements   )

Order entered: 11/22/2011

**I. INTRODUCTION**

On September 21, 2011, the Vermont Public Power Supply Authority ("VPPSA") filed a petition ("Petition") with the Vermont Public Service Board ("Board") pursuant to 30 V.S.A. § 108(a), for approval to provide credit support and pledge collateral as may be required under power purchase agreements ("PPA") entered into by VPPSA for the benefit of VPPSA's twelve municipal utility members ("Members"),<sup>1</sup> and also for certain non-member utilities or affiliates. VPPSA seeks general Board approval to provide credit support and pledge collateral under the PPAs for a period not to exceed five years. Additionally, VPPSA requests that the Board approve, on the same grounds, the credit and collateral provisions contained in existing PPAs between VPPSA and counterparties, and that the Board grant specific approval of the collateral pledge provision contained in a proposed PPA with WM Renewable Energy ("WM Renewable") that VPPSA seeks to enter into by December 31, 2011. The Petition was supported by the prefiled testimony of Brian M. Callnan, Director of Power Supply and Transmission for VPPSA, and Crystal Currier, Controller for VPPSA, and by accompanying exhibits.

On October 26, 2011, the Vermont Department of Public Service (the "DPS") informed the Board that it had reviewed the Petition and supporting documentation. Based on its review,

---

1. Barton Village, Inc. Electric Department, Village of Enosburg Falls Water & Light Department, Town of Hardwick Electric Department, Village of Hyde Park Electric Department, Village of Jacksonville Electric Company, Village of Johnson Water & Light Department, Village of Ludlow Electric Light Department, Village of Lyndonville Electric Department, Village of Morrisville Water & Light Department, Village of Northfield Electric Department, Inc., Village of Orleans Electric Department, and Swanton Village, Inc. Electric Department.

the DPS recommends that the Board find VPPSA's request to provide credit support and pledge corporate assets to be consistent with the general good of the state, and recommends approval without hearing. The DPS further recommends that the Board's approval be conditioned on requiring VPPSA to file an annual report with the Board and the DPS, broken down by quarters, of VPPSA's collateral requirements under its PPAs for the given year. The DPS recommends that the annual reporting requirement should be in place for two years from the date of the Board's order in this docket, extendable upon request by the DPS.

On October 31, 2011, the DPS filed its Determination Under 30 V.S.A. § 202(f) with the Board, recommending that the Board approve the Petition without hearing and finding that the pledge of VPPSA's corporate property as set forth in the Petition is consistent with the *Vermont Electric Plan* pursuant to 30 V.S.A. § 202(f).

## **II. FINDINGS**

1. The Vermont Public Power Supply Authority is a company as defined by 30 V.S.A. § 201 and as such is subject to the Board's jurisdiction pursuant to 30 V.S.A. §§ 108(a) and 5040. Petition at 1.

2. VPPSA has twelve Members, all of which are Vermont municipal electric utilities, and for which VPPSA makes purchases of electric power to meet the Members' load obligations. VPPSA also purchases power on behalf of certain non-member affiliates. Petition at 1.

3. VPPSA purchases and sells wholesale power through markets overseen by the Independent System Operator of New England ("ISO-NE") and also through contracts with third party providers. As the power market has developed and has experienced certain credit-related difficulties, PPA parties in such contracts seek and expect protection from financial risk if the counterparty falls below certain credit ratings, exceeds pre-established credit limits or otherwise fails to perform under the contract. The need to provide financial assurance has become a requirement of most power supply arrangements. Generally, the contracts specify the provision of "performance assurance" in the form of cash held as collateral, letters of credit, a third-party guarantee, or some other form of collateral acceptable to the counterparty. Callnan pf. at 2-3.

4. The requirement to provide performance assurance arises very quickly under the PPAs, typically in two or three business days. Failure to provide such assurance may become an event of default or limit or extinguish VPPSA's ability to purchase power, and such a limited time period does not afford VPPSA sufficient time to obtain regulatory approval to pledge such collateral. Accordingly, VPPSA seeks a more general approval of the Board to be able to provide such assurances without the need to seek specific approval at the time such assurances may be necessary. Callnan pf. at 3; exh. VPPSA-Callnan-2.

5. There is risk to VPPSA and its Members' ratepayers if VPPSA is unable to provide performance assurance under the PPAs. In the event that VPPSA was unable to provide the necessary credit and collateral support, its access to purchase power in the ISO-NE market or from third parties would be limited or even extinguished. Such an event would seriously jeopardize VPPSA's ability to provide a reliable and reasonably priced supply of power to its Members for the benefit of their ratepayers. Callnan pf. at 3.

6. VPPSA provided an example contract as Exhibit VPPSA-Callnan-2, which is a copy of the Edison Electric Institute's and National Energy Marketer's Association's Master Power Purchase & Sale Agreement (the "Master Agreement"). Page 5 thereof states that the Master Agreement was prepared "to facilitate orderly trading in and development of wholesale power markets." Many counterparties use this Master Agreement as their power purchase and sale contract; other counterparties use separately drafted agreements which generally incorporate terms and conditions (or variants thereof) included in the Master Agreement. Callnan pf. at 3-4.

7. The need to provide performance assurance under the Master Agreement is triggered by general and specific defined events. Sections 8.1(b) and 8.2(b) provide that if a party has "reasonable grounds to believe" that the other party's creditworthiness or performance has become "unsatisfactory," performance assurance may be required; these general provisions require a good-faith determination by the requesting party. More specifically, Sections 8.1(c) and 8.2(c) provide that if one party's net exposure to the second party exceeds the first party's credit limit (also called collateral threshold), the second party may require performance assurance. Sections 8.1(d) and 8.2(d) provide that if a party experiences a "Downgrade Event," the other party may require performance assurance. A "Downgrade Event" is defined as a downgrade by

Standard & Poor's ("S&P") or Moody's Investors Service ("Moody's") (or other identified rating agency) from the current credit rating of the party. Callnan pf. at 4-5; exh. VPPSA-Callnan-2.

8. Section 8.3 of the Master Agreement specifically states that the delivery of performance assurance provides the receiving party with "a present and continuing security interest in, lien on . . . and assignment of, all cash and cash equivalent collateral." Paragraph 2 of the Collateral Annex to the Master Agreement specifically provides the receiving party with "a present and continuing security interest in and to, and a general first lien upon . . ." the performance assurance provided. It is this grant of a security interest through the provision of performance assurance for which VPPSA seeks Board approval. Callnan pf. at 4-5; exh. VPPSA-Callnan-2.

9. In order to participate in certain markets (e.g., financial transmission rights), ISO-NE requires parties to post cash collateral. As a result, VPPSA also requests Board approval for VPPSA to pledge an interest in the collateral posted to participate in the relevant ISO-NE markets. Callnan pf. at 6.

10. VPPSA has entered into PPAs with provisions relating to collateral, but has never been required to post any collateral. VPPSA requests that, despite the fact that it has never been required to post performance assurance, the Board's approval also cover existing PPAs between VPPSA and counterparties. *Id.*

11. As part of its Petition, VPPSA also includes a request for specific approval of a collateral provision in a proposed PPA with WM Renewable. The collateral provision of Section 5.6 of that PPA secures VPPSA's and WM Renewable's performance under the PPA and requires a pledge of a security interest in posted collateral. VPPSA included this specific request in its Petition because the deadline for obtaining all required approvals under the proposed PPA is December 31, 2011.<sup>2</sup> Callnan pf. at 6-7; exh. VPPSA-Callnan-3.

---

2. VPPSA is not submitting the WM Renewable PPA for Board approval under 30 V.S.A. § 248(a)(1)(A) because the Vermont State Legislature, through the passage of the Vermont Energy Act of 2011, changed the threshold for out-of-state renewable energy and the requirement for approval under Section 248. The WM Renewable PPA represents less than 10% of VPPSA Members' historic peak demand and is "renewable energy" under 30 V.S.A. § 8002(2)(A). Callnan pf. at 7.

12. VPPSA currently maintains a general credit facility with KeyBank, N.A. that provides for a revolving line of credit in the amount of \$6 million, with a sublimit of \$3 million for issuances of letters of credit. In the event that VPPSA were to receive written notification from a PPA counterparty requesting that VPPSA post performance assurance collateral, VPPSA would meet that obligation by initiating the issuance of a letter of credit from its financial institution under its sublimit availability. VPPSA believes that its current bond rating with Moody's of A3 strengthens and lends credibility to its relationship with its counterparties. *Currier* pf. at 3-4.

13. One of the primary events that may trigger a collateral requirement under a PPA is when the mark-to-market value of the contract with a counterparty moves in an amount that exceeds the maximum collateral threshold requirement. If this were to occur, VPPSA would only be required to post collateral in the amount that the mark-to-market value exceeded the threshold. VPPSA's current line of credit with KeyBank provides a cushion of up to \$6 million for such an event. Accordingly, the mark-to-market value differential in the thresholds would need to move in an amount in excess of \$6 million before VPPSA would exceed its available credit limit. In such an event, VPPSA would post the collateral through its existing line of credit, or if the credit line limit is exceeded, VPPSA would negotiate with the counterparty to set a satisfactory amount of collateral. VPPSA would also communicate this need to its financial institution and negotiate an increase in its line of credit limit. *Id.*

### **III. DISCUSSION**

Based upon the findings and the evidence in the record, I find that VPPSA's Petition as described above will be consistent with the general good of the State. The provision of cash collateral, letters of credit, payment bonds, third-party guarantees, or other acceptable collateral as security for power supply transactions all enhance VPPSA's ability to provide services to its Members and affiliates by maintaining VPPSA's access to the power market on reasonable terms, and providing for power purchase and sales flexibility. I therefore recommend that the Board grant approval of VPPSA's request to provide collateral support for credit as may be required under power purchase and sale agreements with counterparties, including existing PPAs and purchases and sales made through ISO-NE, and including VPPSA's proposed PPA with WM

Renewable, for a period not to exceed five (5) years from the date of the Board's order in this Docket.

The parties have waived the opportunity for review of the Proposal for Decision, briefing, and oral argument, in accordance with 3 V.S.A. § 811.

Dated at Montpelier, Vermont, this 22<sup>nd</sup> day of November, 2011.

s/Jay Dudley  
Jay Dudley  
Hearing Officer

#### **IV. ORDER**

IT IS HEREBY ORDERED, ADJUDGED AND DECREED by the Public Service Board of the State of Vermont that:

1. The terms and conditions proposed by the Vermont Public Power Supply Authority ("VPPSA") to provide credit and collateral support in the form of cash collateral, letters of credit, payment bonds, third-party guarantees, or other acceptable collateral, as may be necessary under power purchase and sale agreements ("PPAs") with counterparties, including existing PPAs and purchases and sales made through the Independent System Operator of New England, Inc., and including a proposed PPA with WM Renewable Energy, all as described in the findings above, are consistent with the general good of the State of Vermont as required by 30 V.S.A. § 108(a), and are approved, for a period not to exceed five (5) years from the date of this Order.

2. At or around each fiscal year-end, VPPSA shall provide the Vermont Public Service Board ("Board") and the Vermont Department of Public Service ("DPS") with an annual report, broken down by quarters, listing VPPSA's collateral requirements under all current and existing PPAs. This reporting requirement shall be in place for a period of two (2) years from the date of this Order and may be extended upon a request filed with the Board by the DPS.

3. This Order does not constitute approval of any particular capital or operating expenditure nor the underlying capital structure that VPPSA may implement. Nothing in this approval shall preclude the DPS or any other party, or the Board, from reviewing and/or challenging those expenditures and/or VPPSA's resulting capital structure in any future proceeding.

Dated at Montpelier, Vermont, this 22<sup>nd</sup> day of November, 2011.

<u>s/James Volz</u>	)	
	)	PUBLIC SERVICE
	)	
<u>s/David C. Coen</u>	)	BOARD
	)	
	)	OF VERMONT
<u>s/John D. Burke</u>	)	

OFFICE OF THE CLERK

FILED: November 22, 2011

ATTEST: s/Susan M. Hudson  
Clerk of the Board

*Notice to Readers: This decision is subject to revision of technical errors. Readers are requested to notify the Clerk of the Board (by e-mail, telephone, or in writing) of any apparent errors, in order that any necessary corrections may be made. (E-mail address: psb.clerk@state.vt.us)*

*Appeal of this decision to the Supreme Court of Vermont must be filed with the Clerk of the Board within thirty days. Appeal will not stay the effect of this Order, absent further Order by this Board or appropriate action by the Supreme Court of Vermont. Motions for reconsideration or stay, if any, must be filed with the Clerk of the Board within ten days of the date of this decision and order.*